STATE OF MICHIGAN

COURT OF APPEALS

GRAND TRAVERSE AFC, INC.,

Plaintiff/Counterdefendant-Appellant,

v

RESIDENTIAL CARE ALTERNATIVES,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
September 14, 1999

No. 207054
Wayne Circuit Court
LC No. 96-618235 CK

Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

In this contract action, plaintiff appeals as of right from an order granting summary disposition in favor of defendant and denying plaintiff's motion for summary disposition. We affirm.

Underlying this dispute is a multi-tiered system of contracts used to deliver community mental health services to individuals with state funds. The Detroit-Wayne County Community Mental Health Board ("Board") contracted with defendant to provide specialized residential services pursuant to MCL 330.1228; MSA 14.800(228). The Board was acting under the purview of its master contract with the State Department of Mental Health ("DMH").[1] Defendant, in turn, contracted with licensed home providers, such as plaintiff, to provide specialized residential services for mentally ill recipients. The contract that is the subject matter of this appeal covered fiscal year 1990/1991 (October 1, 1990, to September 30, 1991). Section IX contained an integration clause providing that the contract "shall be read and interpreted as an integrated whole; and that this contract constitutes the full and complete agreement of the parties unless subsequently amended in writing." The general provisions in § I of the contract incorporated a number of governmental requirements as listed in DMH Schedule 3819:

> H. The HOME PROVIDER shall abide by the Public Acts, Department of Mental Health Rules, Policies, Procedures and relevant Guidelines which deal directly with the subject matter of this contract as listed in DMH Schedule 3819 and are hereby made part of this contract by reference and all other statutes, ordinances, regulations and policies governing its operations.

* * *

> I. The SERVICE PROVIDER shall provide the HOME PROVIDER with copies of all applicable laws, rules, policies and procedures referred to in the preceding paragraph and attached to this contract as DMH Schedule 3819. With respect to the rules and policies detailing financial provisions, i.e., cost settlement procedures, other financial provisions of Department of Mental Health Administrative Rules, Regulations and Policies which materially affect HOME PROVIDER cost reimbursement, etc., if the HOME PROVIDER is not furnished with copies of same by the SERVICE PROVIDER, the HOME PROVIDER shall not be bound thereby.

Finally, an administrative provision in § III of the contract required a cost settlement at the end of the contract period:

> J. The HOME PROVIDER shall cost settle in accordance with "Expenditure Reports/Cost Settlement" provisions of DMH Guidelines for services provided under this contract based upon the approved home budget, DMH-3835 upon expiration of the contract term or termination of the contract. The SERVICE PROVIDER shall complete a preliminary cost settlement within 60 days of receipt of the final quarterly statement of revenue and expenditures, DMH-3836. A final cost settlement may be performed by the SERVICE PROVIDER's auditors and establish a repayment schedule as the need requires in accordance with DMH Guidelines.

The DMH guideline on cost settlements itself, which was incorporated into the contract as item 6 of DMH Schedule 3819, specified in § III [policy], ¶ D:

> COST SETTLEMENT FOR A DMH-3800B CONTRACT IS INITIALLY PERFORMED THROUGH A REVIEW BY CONTRACT MANAGEMENT. IN ADDITION, THE DEPARTMENT HAS THE RIGHT TO PERFORM A FINANCIAL AUDIT WITHIN SEVEN YEARS.

DMH audited the Board for fiscal year 1990/1991 and issued an audit report dated December 9, 1994, which concluded that defendant overpaid plaintiff by $29,636. During the Board's opportunity for an audit review within DMH, the amount overpaid was reduced to $28,036. Plaintiff thereafter filed the instant action to enjoin defendant from recouping this sum by reducing payments due it under their contract for fiscal year 1995/1996. Defendant filed a countercomplaint for a declaratory judgment. Both parties later filed motions for summary disposition. The trial court granted defendant's motion and denied plaintiff's motion based on its determination that the parties' contract had, by reference, adopted the relevant DMH guideline that permitted the DMH audit and reimbursement. The trial court also denied plaintiff's motion for rehearing or reconsideration.

Having considered plaintiff's arguments on appeal, we conclude that plaintiff has not demonstrated a basis for disturbing the trial court's decision. Plaintiff's reliance on MCR 2.517 is misplaced because findings of fact and conclusions of law are unnecessary for decisions on motions, unless required by a particular rule. MCR 2.517(A)(4). The summary disposition rule, MCR 2.116, does not require findings. On the contrary, when deciding a motion for summary disposition, a court

must be careful to avoid making findings of fact under the guise of determining that no issue of material fact exists. *Mahaffey v Attorney General*, 222 Mich App 325, 343; 564 NW2d 104 (1997). Under MCR 2.116(I)(1), the trial court shall render judgment without delay if a party is entitled to judgment as matter of law, or the proofs show that there is no genuine issue of material fact. MCR 2.116(I)(1).

Our review of a trial court's decision on a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Here, the trial court did not specify whether it was applying MCR 2.116(C)(8) or (10), but it is apparent that the motion was granted under MCR 2.116(C)(10) because materials apart from the pleadings were considered. See *Atkinson v Detroit*, 222 Mich App 7, 9; 564 NW2d 473 (1997).

A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Spiek, supra* at 337. In reviewing a trial court's decision on the motion, we consider the affidavits, pleadings, depositions, admissions and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in a light most favorable to the nonmoving party, *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), and grant the benefit of all reasonable doubt to that party, *Bourne v Farmers Ins Exchange*, 449 Mich 193, 197; 534 NW2d 491 (1995). A genuine issue of material fact must be established by admissible evidence. *SSC Associates Ltd Partnership v General Retirement System*, 192 Mich App 360, 364; 480 NW2d 275 (1991).

In reviewing plaintiff's arguments, we note, as a threshold matter, that plaintiff's reliance on principles governing contract formation is misplaced. Although a valid contract requires mutual assent, *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992), one who signs a contract cannot claim, when enforcement is sought, that "he did not read it, or that he supposed it was different in its terms." *Stark v Kent Products, Inc*, 62 Mich App 546, 548; 233 NW2d 643 (1975). Because plaintiff's arguments, in substance, do not attack the validity of the contract, but only its meaning, we apply principles of contract interpretation in determining whether summary disposition was properly granted to defendant.

In the context of a motion for summary disposition, a trial court may determine the meaning of a contract only when the terms are unambiguous. *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997); *SSC Associates Ltd Partnership, supra* at 363. A contract is ambiguous if the language is subject to two or more reasonable interpretations or is inconsistent on its face. *Petovello v Murray*, 139 Mich App 639, 642; 362 NW2d 857 (1984). If a contract, though inartfully worded or clumsily arranged, fairly admits of but one interpretation, it may not be said to be ambiguous or fatally unclear. *Allstate Ins Co v Goldwater*, 163 Mich App 646, 648; 415 NW2d 2 (1987).

In the case at bar, plaintiff has not shown any contractual ambiguity that precluded summary disposition under MCR 2.116(C)(10). The fact that the parties did not execute a DMH-3800B contract is neither disputed nor material. The material fact is that the parties' contract unambiguously required the parties to cost settle in accordance with the DMH guideline. "Cost settlement" was defined in the DMH guideline as "a final reconciliation and adjustment of revenue and expenditures under a DMH-3800B or DMH-3800F contract." Although the parties did not execute a DMH-3800B or

DMH-3800F contract, their contract, § I(H), made it clear that applicable guidelines are determined based on whether they "deal directly with the subject matter of this contract." The only reasonable construction that can be given to these provisions is that the cost settlement in the DMH guideline devised for a DMH-3800B contract applied when it dealt directly with the same subject matter as the parties' contract, namely, reconciling revenue and expenditures of a home provider's contract funded by state money.

We also reject plaintiff's claim that applying the cost settlement procedures called for in the DMH guideline conflicts with the parties' contract and renders the provision allowing for an audit by defendant's auditors a nullity. Where possible, all contract language should be harmonized and construed so as to make it all meaningful. *Purlo Corp v 3925 Woodward Avenue, Inc*, 341 Mich 483, 487-488; 67 NW2d 684 (1954). A reference by contracting parties to an extraneous writing for a particular purpose makes it a part of their agreement only for the purpose so specified. *Berkel & Co Contractors v Christman Co,* 210 Mich App 416, 419; 533 NW2d 838 (1995).

Examined with these principles of contract interpretation in mind, the contract language, although inartfully arranged, is subject to only one reasonable interpretation. Two audits are possible, but neither is mandatory. By using the phrase "final cost settlement may be performed by the SERVICE PROVIDER's auditors" in the last sentence of § III(J) of their contract, the parties plainly intended that an audit by defendant's auditors is a permissible part of the parties' process of arriving at their "final cost settlement" at the end of the contract term, but is not required. See *Mollett v Taylor*, 197 Mich App 328, 339; 494 NW2d 832 (1992) (the word "may" generally designates discretion). Furthermore, although the word "final" does suggest that something has come to an end,[2] when examined in context, its use cannot be reasonably construed as evidencing an intent to preclude a DMH audit or to otherwise conclusively establish allowable expenditures.

Again, if possible, all contract language should be harmonized and construed so as to make it all meaningful. *Purlo Corp, supra* at 487-488. On the one hand, the word "final," preceding "cost settlement" in the last sentence of § (III)(J), appears redundant on its face because a cost settlement is defined in the DMH guideline, § IV, as a "final reconciliation and adjustment of revenue and expenditures . . . ." On the other hand, when examined within the context of the parties' contract, § III(J), it becomes clear that the word "final" is intended to distinguish a cost settlement prepared by defendant's auditors from the "preliminary cost settlement within 60 days of receipt of the final quarterly statement of revenue and expenditures" recognized in the preceding sentence. Thus, "final," within the context of the last sentence of § III(J), can reasonably be interpreted as meaning only that an audit may be used to complete the cost settlement mandated when the contract ends. At this point, the parties, through defendant's auditors, would have reached a decisive position on whether the cost settlement comports with the DMH guideline. Logically, because the DMH has seven years to audit pursuant to the DMH guideline incorporated into the parties' contract, the DMH is not part of the parties' contemplated process for closing out the contract by virtue of the cost settlement. The only reasonable conclusion that can be reached by giving effect to all of the contract language is that the DMH, although not required to do so, may conduct its own audit of a cost settlement within seven years. Hence, while

the parties' contract permits defendants' auditors to prepare a "final cost settlement," we reject plaintiff's claim that this must be the final audit.

We have also considered plaintiff's arguments concerning the affidavits and other proofs extrinsic to the contract that were submitted by the parties in support of their respective motions for summary disposition in the trial court, but are not persuaded that plaintiff presented any extrinsic evidence that demonstrated the existence of an ambiguity requiring factual development. See *Meagher v Wayne State Univ*, 222 Mich App 700, 722; 565 NW2d 401 (1997) (extrinsic evidence may be admissible to prove the existence of an ambiguity). With regard to Bonita Lauer's deposition, we reject plaintiff's claim that the trial court used the deposition to construe the contract. The deposition was used to determine whether a genuine issue of material fact was shown as to whether § I(I) of the parties' contract was satisfied. This was a material issue because § I(I) required that plaintiff be given copies of policies materially affecting cost reimbursements in order for plaintiff to be bound by them. Compliance with § I(I) did not present an issue of contract interpretation, but rather one of contract performance. Examined in the proper context, we conclude that plaintiff has not demonstrated a basis with regard to § I(I) for disturbing the trial court's grant of summary disposition in favor of defendant.

With regard to plaintiff's claim that "appeal" rights were created by its contract with defendant, we note that plaintiff relies on extrinsic evidence for an appeal process; in particular, plaintiff relies on a statement in an October 23, 1992, letter to plaintiff from defendant's auditing firm, which provided that a draft copy of plaintiff's financial statement would be adjusted within ten days if plaintiff provided support for certain expenditures that the auditors concluded lacked sufficient documentation. We find that plaintiff uses the term "appeal" too loosely. The opportunity afforded to plaintiff to supply missing documentation is not an "appeal," as that term is understood in a technical and appropriate sense, because it does not involve action on the audit adjustments by a superior decisionmaker. Cf. *In re Manufacturer's Freight Forwarding Co*, 294 Mich 57, 70; 292 NW 678 (1940) ("appeal," in technical and appropriate sense, means taking suit or cause and its final determination from one court or jurisdiction after final judgment to another); *Babcock v City of Grand Rapids*, 308 Mich 412; 415; 14 NW2d 48 (1944) (distinguishing "appeals" that result in de novo proceeding from a "review" involving a reexamination of a prior proceeding). We conclude that the extrinsic evidence relied upon by plaintiff did not show an ambiguity or otherwise create a genuine issue of material fact. *Meagher, supra* at 722.

Next, turning to plaintiff's statutory arguments, we find that plaintiff has not demonstrated a statutory basis for construing the contract so as to preclude a DMH audit. Plaintiff's claim that the trial court's interpretation of the contract violates MCL 330.1244; MSA 14.800(244) is not properly before us because it is insufficiently briefed, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984), and plaintiff has not demonstrated that this question was presented to the trial court. As a general rule, absent unusual circumstances, an issue that was not raised below may not be raised on appeal. *Peterman v Dep't of Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). In any event, plaintiff did not present evidence from which it could reasonably be inferred that the DMH caused the audit undertaken by defendant's auditors. More importantly, the statute cannot reasonably be construed as limiting the number of audits that can be performed. It only creates an affirmative duty to audit, or cause to be audited, the expenditures of state funds. Statutes must be given a reasonable construction,

considering the purpose of the statute and the object sought to be accomplished by the Legislature. *VandenBerg v VandenBerg*, 231 Mich App 497, 499; 586 NW2d 570 (1998). Further, we hold that plaintiff has not established any basis under MCL 600.631; MSA 27A.631 for precluding defendant from recouping $28,036 as a result of the DMH audit and review process. Although plaintiff may believe that its contract terms are unfair, we conclude that plaintiff has not established any basis for disturbing the trial court's grant of summary disposition in favor of defendant pursuant to MCR 2.116(C)(10).

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Jeffrey G. Collins

[1] The Department of Mental Health was renamed the Department of Community Health in 1996 pursuant to an executive reorganization order. MCL 330.3101; MSA 14.800(2101).

[2] In this regard, we note that contract language is to be accorded its plain and ordinary meaning. *UAW-GM Human Resource Center v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). A dictionary definition may be used to establish the meaning of a word having a common usage. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 568; 519 NW2d 864 (1994). The word "final" is defined in the *Random House Webster's College Dictionary* (1997), p 487, as:

> 1. pertaining to or coming to an end; last in place, order, or time. 2. Ultimate: *the final goal*. 3. Conclusive or decisive: *a final decision*. 4. Constituting the end or purpose: *a final result*. 5. *Law*. Precluding further controversy on the questions passed upon: *a final decree*. -- *n.* 6. Something that is last or terminal. . . . . [Emphasis in original.]